United States Department of Labor
Employees' Compensation Appeals Board

M.G., Appellant	)	
and	)	**Docket No. 19-1938**
	)	**Issued: September 3, 2020**
DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, Seattle, WA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On September 23, 2019 appellant filed a timely appeal from an August 21, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish a respiratory condition causally related to the accepted April 4, 2018 employment exposure.

FACTUAL HISTORY

On June 6, 2018 appellant, then a 51-year-old claims examiner, filed a traumatic injury claim (Form CA-1) alleging that on April 4, 2018 he developed headaches, watery eyes, dizziness,

[1] 5 U.S.C. § 8101 *et seq.*

cough, and congestion in the performance of duty due to exposure to toxic fumes and vapors from 11:30 a.m. to 3:30 p.m. which occurred while contractors were welding/soldering copper pipes and fittings in an enclosed workspace. The employing establishment controverted the claim.

Appellant was seen on April 4, 2018 by Karen L. Morice, a certified physician assistant. He reported that approximately 11:30 a.m. that day he smelled something burning at work, and that the smell increased and decreased throughout the afternoon. Around 3:00 p.m., a contractor came out of a (mechanical) closet and appellant realized that he had been soldering copper pipe all day. Appellant indicated that the closet was about 25 feet from his desk. He reported that he first noticed his eyes watering in the morning, which improved, but his headache and dizziness (lightheadedness) persisted. Appellant also felt a little more shortness of breath than normal when walking from the ferry to the clinic. He denied sneezing or coughing, but advised that he had previously experienced a cough when dust was blown on his desk. Appellant's physical examination was reported as normal.

On June 1, 2018 appellant was examined by Sydney E. Thompson, an advanced registered nurse practitioner. He described the April 4, 2018 employment incident and indicated that his cough was continuing and occurred mainly at work. Appellant also reported that he felt like he had a cold all of the time and that a few weeks prior he was light headed and had trouble going "from point A to B." His chest x-ray and physical examination were reported as normal with no acute cardiopulmonary abnormalities.

In a June 6, 2018 report, Dr. Sundance L. Rogers, a Board-certified internist, noted that appellant was seen for a cough, dizziness, headache, and exposure to toxic chemicals. She noted a history of appellant's April 4, 2018 employment exposure and that his dizziness had resolved, but his headache remained. Dr. Rogers opined that appellant's persistent irrigative cough was secondary to workplace exposure. She reported that appellant had a chronic cough the prior June which resolved in October and that he had been without a cough until the April exposure at work to copper fumes. Based on appellant's excellent peak flow that day, Dr. Rogers found no evidence of asthma. She noted appellant's shortness of breath, but indicated that the etiology was unclear.

OWCP also received appellant's April 4 and 5, 2018 e-mails to employing establishment officials, which noted: the burning smell and his symptoms; a packet entitled "Hazards From Inhaling and Exposure to Soldering Fumes"; and a June 11, 2018 letter from the employing establishment controverting the claim.

In a June 18, 2018 development letter, OWCP advised appellant of the type of factual and medical evidence required to establish his traumatic injury claim and requested a narrative medical report from his physician which contained a diagnosis and provided the physician's rationalized medical explanation as to how the alleged employment incident caused his diagnosed condition. It afforded him 30 days to submit the necessary evidence. On that same date, OWCP also sent a development letter to the employing establishment. The employing establishment was asked to provide comments regarding appellant's exposure to toxic substances at the workplace on April 4, 2018.

In response, OWCP received a June 27, 2018 statement from the employing establishment and a June 10, 2015 safety data sheet. The employing establishment confirmed that on April 4,

2018 soldering was performed in a mechanical closet, on the same floor as appellant's office, which caused a light smell several times during the day.

By decision dated July 20, 2018, OWCP denied appellant's claim, finding that he had not established the factual component of fact of injury as he had not responded to its June 18, 2018 development questionnaire. It concluded that the requirements had therefore not been met to establish an injury as defined by FECA.

OWCP subsequently received a July 16, 2018 statement in response to OWCP's development questionnaire. Appellant reiterated details regarding the April 4, 2018 incident as well as details regarding a March 2017 incident during which a coworker placed a personal fan on a shared wall which directed dust and environmental irritants into his workspace. OWCP also received: an e-mail from appellant to employing establishment representatives pertaining to the April 4, 2018 odor and related complaints; an April 4, 2018 e-mail notification that another employee, G.N., had reported a burning smell; a document titled "Health Hazards From Inhaling And Exposure To Smoldering Fumes"; a safety data sheet from a vendor; a sworn declaration of appellant's union president; and a copy of the national collective bargaining agreement between the employing establishment and his union.

On August 7, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received additional evidence including a June 20, 2018 "Welch Allyn CardioPerfect Workstation" report and a June 20, 2018 spirometer report, which noted an unconfirmed/abnormal interpretation.

In a September 6, 2018 report, amended on October 3, 2018, Dr. Rachakonda D. Prabhu, a pulmonary disease specialist, reported that appellant's chronic cough started at work on April 4, 2018 around 11:30 a.m. Appellant indicated that the possible source of his symptoms, which included frequent coughing bouts, dizziness, headache, and watery eyes, was discovered around 3:30 p.m. on April 4, 2018 when he learned that contractors had been welding and soldering copper pipes on his work floor the entire day. Dr. Prabhu indicated that, while appellant was no longer exposed to the welding, his symptoms persisted and he sought further treatment including x-ray, spirometry, and pulmonary function testing. He opined that, based on appellant's history, appellant had reactive airway dysfunction syndrome (RADS), but indicated bronchial provocative testing was needed to make a diagnosis. Dr. Prabhu noted that bronchial provocative testing performed that day indicated an asthma diagnosis. He provided an assessment of contact exposure to hazardous, chiefly nonmedicinal, chemicals; cough variant asthma; exercise-induced bronchospasm; and reactive airway dysfunction.

By decision dated December 12, 2018, an OWCP hearing representative modified the July 20, 2018 decision, finding that appellant had established that the April 4, 2018 employment exposure occurred as alleged. The claim remained denied, however, as the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted April 4, 2018 employment exposure.

On February 8, 2019 appellant requested reconsideration.

In a November 5, 2018 report, Dr. Prabhu indicated that on April 4, 2018 a maintenance crew performed cutting, welding, and soldering of copper pipe within 30 feet of appellant's desk for approximately four hours. He noted appellant's medical history following the April 4, 2018 workplace exposure to toxic substances, indicating that the September 6, 2018 bronchial provocative testing was consistent with RADS. Dr. Prabhu opined that the exposure to welding fumes at the employing establishment caused the RADS. He noted that appellant returned to work and that on September 21 and October 24, 2018 he was exposed to cleaning agents by a maintenance crew. Dr. Prabhu diagnosed asthma secondary to RADS as a result of the new workplace exposures, noting that the employing establishment continued to expose appellant to harmful toxins in the workplace as the maintenance always occurred during work hours. He advised that appellant had decreased lung function due to RADS, which was caused by his workplace exposure.

A copy of March 22, 2019 diagnostic tests were received, along with an April 26, 2019 letter from appellant and an April 30, 2019 letter from J.S. noting the April 4, 2018 incident.

By decision dated May 1, 2019, OWCP denied modification of its December 17, 2018 decision.

In a May 14, 2019 addendum report, Dr. Prabhu indicated that appellant has moderate persistent asthma and RADS. He advised that the medical evidence, including the June 20, 2018 abnormal spirometer report and September 6, 2018 bronchial provocative testing, was sufficient, objective, well-rationalized medical evidence of the diagnosed RADS. Dr. Prabhu opined, based on a reasonable degree of medical certainty, that the April 4, 2018 employment exposure to toxic fumes and vapors resulted in appellant's RADS. He indicated that there were no other outside factors that may have caused the RADS, except for the April 4, 2018 exposure.

On May 29, 2019 appellant requested reconsideration.

By decision dated August 21, 2019, OWCP denied modification of its May 1, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[3] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related

[2] *Id.*

[3] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.[4] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[6] There are two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[9] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.[10] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition, and appellant's specific employment incident.[11]

In a case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[12]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a respiratory condition causally related to the accepted April 4, 2018 employment exposure.

In a June 6, 2018 report, Dr. Rogers opined that appellant's persistent irrigative cough was secondary to workplace exposure as he had been without a cough until the April exposure at work

[4] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[7] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *E.M., id.*; *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S., supra* note 6; *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[11] *Id.*

[12] *R.C.*, Docket No. 18-1146 (issued August 12, 2019); *J.F.*, Docket No. 19-0456 (issued July 12, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

to copper fumes. The Board has held that the fact that a claimant was asymptomatic before a claimed injury is insufficient, without adequate rationale, to establish causal relationship.[13] Thus, Dr. Rogers' report is insufficient to establish that appellant sustained a diagnosed condition causally related to his accepted employment exposure.[14]

Appellant also submitted several reports from Dr. Prabhu in support of his claim. In a September 6, 2018 report, amended on October 3, 2018, Dr. Prabhu opined, based on appellant's history, that appellant has RADS. However, he indicated that bronchial proactive testing was needed to make a diagnosis. However, these reports failed to provide an opinion regarding the cause of appellant's cough variant asthma or the other diagnosed conditions.[15] The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value.[16] This report is thus insufficient to establish causal relationship.

In his November 5, 2018 report, Dr. Prabhu provided an assessment of moderate persistent asthma and RADS. He indicated that the September 6, 2018 bronchial provocative testing was consistent with RADS. Dr. Prabhu opined that the exposure to welding fumes at the employing establishment caused the RADS and that appellant had decreased lung function due to employment-related RADS. While he generally supported causal relationship, he did not provide rationale explaining how the accepted exposure was sufficient to result in the diagnosed conditions. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition is related to an employment exposure.[17] Thus, this report is of limited probative value and insufficient to establish the claim.

In a May 14, 2019 addendum report, Dr. Prabhu diagnosed moderate persistent asthma and RADS. He indicated that the June 20, 2018 abnormal spirometer report and September 6, 2018 bronchial provocative testing was sufficient objective well-rationalized medical evidence of the diagnosed RADS. Dr. Prabhu opined, based on a reasonable degree of medical certainty, that the April 4, 2018 employment exposure to toxic fumes and vapors resulted in appellant's RADS as there were no other outside factors that may have caused the RADS. Although he supported causal relationship, he does not offer medical rationale to explain how and why he believes that only the April 4, 2018 employment incident could have resulted in or contributed to the diagnosed conditions or provide an explanation as to why his conditions were not due to other conditions.

[13] *A.R.*, Docket No. 19-0465 (issued August 10, 2020); *J.F.*, Docket No. 19-1694 (issued March 18, 2020).

[14] *See D.L.*, Docket No. 18-0767 (issued March 10, 2020).

[15] *L.D.*, Docket No. 18-1468 (issued February 11, 2019).

[16] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

[17] *D.L.*, Docket No. 19-0900 (issued October 28, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

Therefore, this report is also of limited probative value and is insufficient to establish appellant's claim.

The record also contains an April 4, 2018 report by a certified physician assistant and a June 1, 2018 report from a registered nurse practitioner. However, these reports will not suffice for purposes of establishing entitlement to FECA benefits as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.[18]

The remainder of the medical evidence, including a June 20, 2018 spirometer report and March 22, 2019 diagnostic tests, standing alone, lack probative value as they do not provide a physician's opinion on whether there is a causal relationship between appellant's accepted employment incident and a diagnosed condition.[19] For this reason, this evidence is insufficient to meet his burden of proof.

As the medical evidence of record does not contain a rationalized opinion on causal relationship, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a respiratory condition causally related to the accepted April 4, 2018 employment incident.

[18] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *C.P.*, Docket No. 19-1716 (issued March 11, 2020) (physician assistants are not physicians as defined under FECA).

[19] *See P.A.*, Docket No. 18-0559 (issued January 29, 2020); *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *R.M.*, Docket No. 18-0976 (issued January 3, 2019).

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 3, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board